

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to revise, without extension, the Annual Report of Foreign Banking Organizations (FR Y-7). The revisions to the mandatory FR Y-7 information collection are effective beginning with FR Y-7 reports for fiscal year-ends that end on or after March 1, 2018.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer – Nuha Elmaghrabi – Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer – Shagufta Ahmed – Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The

Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the revision of the following information collection:

Report titles: Annual Report of Holding Companies; Annual Report of Foreign Banking Organizations; Report of Changes in Organizational Structure; Supplement to the Report of Changes in Organizational Structure.

Agency form numbers: FR Y-6; FR Y-7 (with revision); FR Y-10; FR Y-10E.

OMB Control number: 7100-0297.

Effective date: Beginning with fiscal year-ends that end and for reports submitted on or after March 1, 2018.

Frequency: FR Y-6: Annual;¹ FR Y-7: Annual;² FR Y-10: Event-generated;³ FR Y-10E: Event-generated.⁴

Respondent: Bank holding companies (BHCs) and savings and loan holding companies, securities holding companies, and intermediate holding companies (collectively, holding companies (HCs)), foreign banking organizations (FBOs), state member banks unaffiliated with

¹ The FR Y-6 is submitted annually, no later than 90 calendar days after the end of the respondent's fiscal year. Individual respondent data are available to the public upon request through the appropriate Reserve Bank. Under certain circumstances, however, respondents may request confidential treatment.

² All FBOs that are qualifying file the FR Y-7 annually as of the end of the FBO's fiscal year; the data are due no later than four months after the report date. Individual respondent data are available to the public upon request through the appropriate Reserve Bank. Under certain circumstances, however, respondents may request confidential treatment.

³ The FR Y-10 is event-generated, and the data are submitted within 30 calendar days of a reportable transaction or event. Individual respondent data are available to the public upon request through the appropriate Reserve Bank. Under certain circumstances, however, respondents may request confidential treatment. Limited data from the FR Y-10 are published on the National Information Center's public website.

⁴ The FR Y-10E is event-generated and the data are submitted on an ad-hoc basis as needed.

a BHC, Edge Act and agreement corporations, and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only).

Number of respondents: FR Y-6 initial: 13; FR Y-6 ongoing: 4,827; FR Y-7: 243; FR Y-10: 5,298; FR Y-10E: 5,298.

Estimated average hours per response: FR Y-6 initial: 10 hours; FR Y-6 ongoing: 5.5 hours; FR Y-7: 6 hours; FR Y-10: 2.5 hours; FR Y-10E: 0.5 hour.

Estimated annual burden hours: FR Y-6 initial: 130 hours; FR Y-6 ongoing: 26,549 hours; FR Y-7: 1,458 hours; FR Y-10: 39,735 hours; FR Y-10E: 2,649 hours.

General description of report: The FR Y-6 is an annual information collection submitted by top-tier domestic HCs and FBOs that are non-qualifying. It collects financial data, an organization chart, verification of domestic branch data, and information about shareholders. The Federal Reserve uses the data to monitor HC operations and determine HC compliance with the provisions of the BHC Act, Regulation Y (12 CFR 225), the Home Owners' Loan Act (HOLA), Regulation LL (12 CFR 238), and Regulation YY (12 CFR 252).

The FR Y-7 is an annual information collection submitted by FBOs that are qualifying to update their financial and organizational information with the Federal Reserve. The FR Y-7 collects financial, organizational, shareholder, and managerial information. The Federal Reserve uses the information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

The FR Y-10 is an event-generated information collection submitted by FBOs; top-tier HCs; securities holding companies as authorized under Section 618 of the Dodd-Frank Act (12 U.S.C. § 1850a(c)(1)); state member banks unaffiliated with a BHC; Edge and agreement corporations that are not controlled by a member bank, a domestic BHC, or an FBO; and

nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only) to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in banking and nonbanking activities.

The FR Y-10E is an event-driven supplement that may be used to collect additional structural information deemed to be critical and needed in an expedited manner.

Legal authorization and confidentiality: These information collections are mandatory as follows:

FR Y-6: Section 5(c)(1)(A) of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1844(c)(1)(A)); sections 8(a) and 13(a) of the International Banking Act (IBA) (12 U.S.C. 3106(a) and 3108(a)); sections 11(a)(1), 25, and 25A of the Federal Reserve Act (FRA) (12 U.S.C. 248(a)(1), 602, and 611a); and sections 113, 165, 312, 618, and 809 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)).

FR Y-7: Sections 8(a) and 13(a) of the IBA (12 U.S.C. 3106(a) and 3108(a)); sections 113, 165, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)).

FR Y-10 and FR Y-10E: Sections 4(k) and 5(c)(1)(A) of the BHC Act (12 U.S.C. 1843(k), and 1844(c)(1)(A)); section 8(a) of the IBA (12 U.S.C. 3106(a)); sections 11(a)(1), 25(7), and 25A of the FRA (12 U.S.C. 248(a)(1), 321, 601, 602, 611a, 615, and 625); sections 113, 165, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5365, 5412, 1850a(c)(1), and 5468(b)(1)); and section 10(c)(2)(H) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1467a(c)(2)(H)).

Except as discussed below, the data collected in the FR Y-6, FR Y-7, FR Y-10, and FR Y-10E are generally not considered confidential. With regard to information that a banking organization may deem confidential, the institution may request confidential treatment of such information under one or more of the exemptions in the Freedom of Information Act (FOIA) (5 U.S.C. 552). The most likely case for confidential treatment will be based on FOIA exemption 4, which permits an agency to exempt from disclosure “trade secrets and commercial or financial information obtained from a person and privileged and confidential” (5 U.S.C. 552(b)(4)). To the extent an institution can establish the potential for substantial competitive harm, such information would be protected from disclosure under the standards set forth in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). In particular, the disclosure of the responses to the certification questions on the FR Y-7 may interfere with home country regulators’ administration, execution, and disclosure of their stress test regime and its results, and may cause substantial competitive harm to the FBO providing the information, and thus this information may be protected from disclosure under FOIA exemption 4. Exemption 6 of FOIA might also apply with regard to the respondents’ submission of non-public personal information of owners, shareholders, directors, officers and employees of respondents. Exemption 6 covers “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy” (5 U.S.C. 552(b)(6)). All requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Current Actions: On December 2, 2015, the Board published a notice in the *Federal Register* (80 FR 75457) requesting public comment for 60 days on the proposal to revise, with extension, of the FR Y-6, FR Y-7, FR Y-10, and FR Y-10E. In the notice, the Board proposed revisions to

the FR Y-7 reporting form to require an FBO to indicate its compliance with Regulation YY by certifying that it meets, does not meet, or is not subject to the relevant U.S. risk committee certification requirement and to indicate that it meets, does not meet, or is not subject to the relevant home country stress testing requirement. The notice also included revisions to the instructions to the FR Y-7 reporting form to describe the requirements and the scope of applicability of the report to FBOs. The comment period for this notice expired on February 1, 2016. The Federal Reserve received two comment letters, one from an industry association and one from a banking organization. One comment letter requested clarification on certain of the requirements of Regulation YY, including the requirement to form a U.S. risk committee, while the other comment letter requested clarification on the instructions for the FR Y-6 and the FR Y-10 reports. The Board is adopting the revisions as proposed except that (i) the Board is extending the effective date to be effective beginning with FR Y-7 reports submitted for fiscal year-ends that end on or after March 1, 2018, and (ii) the Board is not adopting the proposed extensions of the FR Y-6, FR Y-7, FR Y-10, and FR Y-10E. The Board is also clarifying several of the issues raised by commenters in response to the December 2, 2015, *Federal Register* notice, as further discussed below.

Section 165 of the Dodd-Frank Act directs the Board to establish enhanced prudential standards for BHCs and FBOs with total consolidated assets of \$50 billion or more and nonbank financial companies that the Financial Stability Oversight Council has designated for supervision by the Board. In addition, the Dodd-Frank Act directs the Board to issue regulations applying certain standards to BHCs and FBOs with total consolidated assets of \$10 billion or more. In particular, the Board is directed to require publicly traded BHCs and FBOs with total consolidated

assets of \$10 billion or more to establish risk committees.⁵ In addition, section 165 requires the Board to issue regulations imposing company-run stress test requirements on BHCs, FBOs, state member banks, and savings and loan holding companies with total consolidated assets of more than \$10 billion.⁶

In February of 2014, the Board adopted enhanced prudential standards for FBOs, including risk committee and stress testing requirements for FBOs with total consolidated assets of more than \$10 billion. These standards are contained in the Board's Regulation YY, which applies different requirements to FBOs depending on their asset size. The risk committee and stress testing requirements are located in the following subparts:

- **Subpart L** establishes stress testing requirements for FBOs with total consolidated assets of more than \$10 billion;
- **Subpart M** establishes risk committee requirements for publicly traded FBOs with total consolidated assets between \$10-\$50 billion;
- **Subpart N** establishes enhanced prudential standards (including risk committee and stress testing requirements) for FBOs with total consolidated assets of \$50 billion or more but combined U.S. assets of less than \$50 billion; and
- **Subpart O** establishes enhanced prudential standards (including risk committee and stress testing requirements) for FBOs with total consolidated assets of \$50 billion or more and combined U.S. assets of \$50 billion or more.

⁵ See 12 CFR 252.132(a) and 252.144(a).

⁶ See 12 U.S.C. § 5365(i).

With regard to risk committee requirements, an FBO subject to subpart M or N of Regulation YY is required to certify that it has a risk committee that oversees the risk management practices of the combined U.S. operations of the company and has at least one member with appropriate risk expertise.⁷ This certification must be filed on an annual basis with the Board concurrently with the FR Y-7. An FBO subject to subpart O of Regulation YY is subject to additional U.S. risk committee requirements that are more prescriptive and must employ a U.S. chief risk officer in the United States.⁸

With regard to stress testing, an FBO subject to subpart L, N, or O of Regulation YY must be subject to a consolidated capital stress testing regime administered or reviewed by the FBO's home country supervisor, meet the home country supervisor's minimum standards, and, in some cases, provide information to the Board about the results of home country stress testing or face additional requirements in the United States. In particular, the U.S. branches and agencies of the FBO become subject to an asset maintenance requirement, and the FBO generally must conduct an annual stress test of its U.S. subsidiaries. An FBO subject to subpart O also must stress test any U.S. IHC.

The revisions to the FR Y-7 implement the U.S. risk committee certification requirement in Regulation YY and provide FBOs with a standardized way to indicate compliance with the home country stress testing requirements (and thus, avoid being subject to additional requirements in the U.S.). The revisions to the FR Y-7 also better describe the risk committee requirements in Regulation YY and the scope of applicability of the report to FBOs.

⁷ The combined U.S. operations of an FBO include its U.S. branches and agencies and U.S. subsidiaries (other than any company held under section 2(h)(2) of the BHC Act, if applicable).

⁸ FBOs subject to subpart O are not required to certify that they have a U.S. risk committee because the Board expects to gain sufficient information through the supervisory process to evaluate whether the U.S. risk committee meets the requirements of this section.

Detailed Discussion of Public Comments

The following is a detailed discussion of the two comments received regarding the FR Y-7 proposal and the responses related to the changes in the FR Y-7 proposal. Although no comments were received on the reporting burden estimates, the Board has reconsidered the estimates given the clarifications provided to Regulation YY. Thus, the Board increased the estimated hourly burden from 4 hours to 6 hours per response.

A commenter requested a number of clarifications regarding the provisions in Regulation YY that require an FBO to maintain a committee of its global board of directors (or equivalent thereof) that oversees the risk-management policies of the combined U.S. operations of the FBO.⁹ Each of these questions are matters of interpretation of the requirements of Regulation YY and are not related to the reporting requirements in the FR Y-7.

First, the commenter requested clarification on whether the committee that oversees U.S. risk must be composed entirely of members of the FBO's global board or may be configured in other ways that take into account the size, scale, and complexity of an FBO's combined U.S. operations and more effectively utilize the expertise of personnel familiar with the risk of these operations.

In response to this comment, to certify compliance with sections 252.132(a) and 252.144(a), the FBO is not required to form a special U.S. risk committee comprised of members of the FBO's board of directors. Rather, the FBO must ensure that the FBO's board of directors or a committee comprised of members of the FBO's board of directors has primary responsibility for oversight of the risks of the combined U.S. operations. The committee that oversees U.S. risk for an FBO subject to Regulation YY is not required to (though it may) directly administer

⁹ See 12 CFR 252.132(a) and 252.144(a).

the FBO's U.S. risk management policies; rather, the FBO may designate specific senior management officials from the FBO's U.S. operations to be responsible for administering the U.S. risk management policies and for providing regular reports directly to the FBO's board of directors or risk committee.¹⁰ The rule is intended to allow an FBO flexibility in establishing its oversight function so long as the FBO's board of directors is informed about and provides the appropriate level of guidance about the risks of the combined U.S. operations of the FBO. However the FBO designs its oversight function, the FBO must also take appropriate measures to ensure that the risk management policies for its combined U.S. operations are implemented and that the risk committee is provided sufficient information on the combined U.S. operations to allow it to carry out its responsibilities.¹¹

The same commenter requested clarification regarding how the requirement in Regulation YY for an FBO to have a committee that oversees U.S. risk would apply to an FBO with a two-tier board structure. The two-tier board structure is a common feature of FBOs in European countries, and generally consists of a supervisory board independent from management that sets the direction of the company and oversees the company's senior management, and a management/executive board that implements the company's strategies and risk management. The purpose of the risk committee requirements in Regulation YY is to ensure that the FBO parent is aware of and takes responsibility for the oversight of the risks of its combined U.S. operations. This oversight function can be integrated into various board structures that currently exist in different foreign countries. In a two-tier board structure, a committee of either the supervisory board or the management/executive board (or a combination thereof) could be

¹⁰ See 79 FR 17284 (March 27, 2014).

¹¹ See 12 CFR 252.132(c) and 252.144(c).

considered a committee of the FBO board of directors for purposes of complying with the requirement under Regulation YY for an FBO to maintain a committee that oversees U.S. risk. Both tiers of a two-tier board are typically involved in evaluating risk management at an FBO with the same goals as those of a single board of directors in the United States.

The same commenter requested clarification regarding various requirements in Regulation YY relating to capital stress testing and liquidity stress testing.¹² To be exempt from additional U.S. capital stress testing requirements, Regulation YY requires an FBO to be subject on a consolidated basis to an annual capital stress testing regime in its home country that meets certain requirements and to actually meet any minimum stress testing standards set by the FBO's home country supervisor.¹³ In reporting Item 5 of the FR Y-7, an FBO is expected to evaluate the stress testing regime to which it is subject and make a reasonable conclusion about whether this regime meets the home country stress testing criteria in Regulation YY.

Moreover, the same commenter requested clarification as to whether an FBO would meet the home country stress test requirements upon a satisfactory completion of an Internal Capital Adequacy Assessment Process (ICAAP). If an ICAAP satisfies the underlying requirements for a capital stress test, including all applicable information requirements in Regulation YY, satisfactory completion of the ICAAP would be sufficient to satisfy these requirements.

Regulation YY requires an FBO to report on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the FBO or the FBO's combined U.S. operations. In either case, the liquidity stress test must incorporate three specified planning

¹² See 12 CFR 252.122(a), 12 CFR 252.145(a), 12 CFR 252.146(b), and 12 CFR 252.158(b).

¹³ The capital stress testing regime must include: (i) an annual supervisory capital stress test conducted by the relevant home country supervisor or an annual evaluation and review by the home country supervisor of an internal capital adequacy stress test conducted by the FBO; and (ii) requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof).

horizons. The same commenter requested guidance on how an FBO should report when the FBO's home country uses fewer or different planning horizons.

In the event that an FBO is not required to conduct an internal liquidity stress test for its consolidated operations using the three specified planning horizons in Regulation YY or chooses not to do so, the FBO may instead choose to provide an internal liquidity stress test for just the combined U.S. operations. Under Regulation YY, if an FBO does not comply with the internal liquidity stress testing reporting requirements, it must limit the net aggregate amount owed by the parent or other non-U.S. affiliates to the U.S. operations to 25 percent or less of the third party liabilities of the combined U.S. operations.

In addition, although Regulation YY does not prescribe the information that must be reported to the Board regarding the internal liquidity stress tests, given the diversity in liquidity reporting requirements across jurisdictions, FBOs are expected to provide sufficient information in the internal liquidity stress test to allow the Board to assess the liquidity position of the FBO.¹⁴

The same commenter requested guidance on an FBO's compliance with the stress testing requirement when annual stress testing is not required by the FBO's home country supervisor. Regulation YY requires an FBO to be subject to a stress testing regime that includes an annual supervisory stress test or annual supervisory evaluation of the FBO's internal stress test. A bi-annual stress test, for example, would not satisfy this requirement.

The same commenter requested guidance on whether an FBO would be deemed to satisfy the requirement to report and certify compliance with its home country capital adequacy requirements by completing the FR Y-7Q. In addition, the commenter requested confirmation of the as-of date and frequency of the certification of the FR Y-7Q. Regulation YY requires an

¹⁴ See 79 FR 17239, 17301 (March 27, 2014).

FBO to report compliance with capital adequacy measures that are consistent with the Basel Capital Framework (as defined in 12 CFR 252.143(a) and 252.154(a)) concurrently with filing the FR Y-7Q; however, Regulation YY does not specify the frequency or the as-of date for an FBO's certification of compliance with its home country capital requirements. On December 2, 2016, the Board approved a final notice to amend the FR Y-7Q to expand reporting regarding an FBO's home country capital ratios consistent with Regulation YY. An FBO's completion of the FR Y-7Q on a quarterly basis would satisfy both the requirement to report and the requirement to certify to the Board its compliance with capital adequacy measures that are consistent with the Basel Capital Framework. If an FBO is unable to report that it is in compliance with such capital adequacy measures, the Board may impose requirements, conditions, and restrictions relating to the U.S. operations of the FBO.¹⁵

A second commenter requested clarification on the definition of an inactive company when an entity is in the liquidation process. Respondents should refer to the definition of "Liquidation" in the Banking, Savings and Loan, and Nonbanking Schedules in the FR Y-10 instructions on how to classify an entity during the liquidation process. Specifically, the instructions state "liquidation refers to final distribution of assets, satisfaction of liabilities, and closing of capital accounts of a company, as opposed to sale or transfer of the company."

The same commenter also requested that the instructions be expanded on reporting when a nonbanking company is a functionally regulated subsidiary since the mere registration with a functional regulator does not necessarily qualify a company as being functionally regulated for these purposes. In response to the commenter's request, the Board notes that respondents should refer to the definition of "Functionally Regulated Subsidiary" in the FR Y-10 instructions, which

¹⁵ See 12 CFR 252.143(c) and 252.154(c).

provides that certain companies may be required to be registered with one of the enumerated regulators without necessarily qualifying as being functionally regulated by that regulator; for example, publicly held companies may be required to be registered with the U.S. Securities and Exchange Commission (SEC) without necessarily qualifying as functionally regulated by the SEC as a securities broker-dealer, investment adviser, investment company, or company that engages in commodity futures trading.

Board of Governors of the Federal Reserve System, January 18, 2018.

Margaret McCloskey Shanks

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Deputy Secretary of the Board.

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